

McDole, Cooke in Law360: Patent Owners See ITC As Alternate Venue

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PRACTICES Patent Litigation, Intellectual Property

Venue recently rose to the forefront of patent litigation law when the U.S. Supreme Court issued its decision in *TC Heartland v. Kraft Foods Group Brands LLC* and the Federal Circuit issued its decision in *In re Cray Inc.* Both decisions narrowed a long-standing interpretation of 28 U.S.C. § 1400(b), the guiding venue statute for patent infringement litigation. Based on these new cases, patent owners who elect to enforce their rights in district court may find themselves forced to litigate in a defendant's home venue. This often undesirable result may have patent owners looking for alternative forums to assert their rights. One such forum patent owners may turn to is the U.S. International Trade Commission. While the ITC presents its own challenges, it offers a broad range of benefits to both patent owners and accused infringers. These benefits in conjunction with recent case law could result in an increase in Section 337 filings at the ITC. ...

Patent owners in a post-*TC Heartland* and *In re Cray* era may explore alternative forums for enforcement of their patent rights for many reasons, including to avoid the narrowed application of § 1400(b) and the corresponding risk of having to litigate in a defendant's home venue. The ITC may be one viable alternative that offers substantive benefits for all parties involved. And if recent trends continue, the ITC may be the new forum of choice for litigating patent infringement.

Excerpted from *Law360*. To read the full article, click [here](#) (Subscription required).